

**IN THE
SUPREME COURT OF MISSOURI**

MISSOURI ALLIANCE FOR RETIRED AMERICANS, et al.,
Plaintiffs-Appellants,

v.

DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS,
DIVISION OF WORKERS' COMPENSATION,
Defendant-Respondent.

Appeal from the Cole County Circuit Court
Nineteenth Judicial Circuit
Honorable Byron L. Kinder, Judge

**BRIEF OF AMICUS CURIAE
INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS
IN SUPPORT OF MISSOURI ALLIANCE FOR RETIRED AMERICANS,
et al.**

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STATEMENT OF JURISDICTION

This Court has appellate jurisdiction over this matter pursuant to Article V, section 3, of the Missouri Constitution.

INTEREST AND POSITION OF THE AMICUS CURIAE

The International Association of Fire Fighters, AFL-CIO, CLC (hereinafter “IAFF”) is an unincorporated association comprised of municipal, state, federal and private sector fire fighters throughout the United States and Canada. The IAFF’s mission includes protecting the safety and improving the working conditions of fire fighters and emergency medical services employees, as well as advancing the general health and welfare of those personnel through collective bargaining, court action, grass roots lobbying and other appropriate means.

As the leading advocate for the rights of over 280,000 fire fighters throughout the United States and Canada, the IAFF seeks to promote the general health of fire fighters who, in the course of serving the public, are directly exposed to physical, thermal, and chemical occupational hazards. Because fire fighters and other workers in Missouri are prohibited from seeking common law remedies in the courts for work-related injuries, they are forced to rely on effective state workers compensation laws to provide protection for themselves and their families. Accordingly, it is crucial to fire fighters, and thus the public they serve, that workers compensation laws in this country provide meaningful medical care and just compensation for work-related injuries. In the present matter, plaintiffs and Appellants, Missouri Alliance for Retired Americans, et al., assert that the

Missouri Workers' Compensation Law, as recently amended (hereinafter "new Missouri Workers' Compensation Law"), reduces the rights of employees so greatly that it effectively denies them justice for their injuries, thereby rendering the administrative compensation system a wholly inadequate substitute for tort remedies available at the common law.

STATEMENT OF FACTS

In addition to the facts set forth below, the IAFF hereby adopts, and incorporates herein, the facts of this case set forth in the brief submitted by Plaintiffs-Appellants Missouri Alliance for Retired Americans, et al.

Occupational Hazards of Fire Fighting

The profession of fire fighting is and always has been a hazardous occupation. Since the tragic events of September 11, 2001, and the aftermath of Hurricane Katrina, however, the profession of fire fighting has been redefined, and fire fighting has become more hazardous than ever. Fire fighters play an essential role in the efforts to detect, prevent, and respond to terrorist attacks, and to respond to natural disasters, hazardous materials, and other mass causality incidents. As the first to arrive on the scene of an emergency, fire fighters must be prepared to protect life and property.

Fire fighters face the possibility of death or serious injury every time they respond to an alarm and/or provide emergency assistance to citizens¹. When fire fighters enter a burning structure, they are entering a setting that is without the regulatory controls and occupational safety and health standards that are found in other workplace settings. Accordingly, fire fighters are exposed to significant occupational hazards far beyond the hazards that other workers are exposed to.

Fire fighting involves strenuous physical activity, and there are numerous physical hazards associated with fire fighting that can lead to serious physical injury or death. For instance, in the event of a structure fire, a fire fighter will face many risks, including the collapse of walls, ceilings and floors at a moment's notice. Under such circumstances, a fire fighter may become trapped or even

¹ According to the most recent available data, in the year 2000, 20.3% of fire fighters suffered work-related injuries as opposed to only 6.1% of the private sector. See *IAFF 2000 Death and Injury Survey*. Every year, the IAFF publishes an annual Death and Injury Survey. During the most recent 10 year period (1991-2000), the survey has found that professional fire fighters experienced 342 line of duty deaths, 502 occupational diseases deaths, 343,861 injuries and 6,632 forced retirements due to occupationally induced diseases or injuries. See *IAFF Death and Injury Surveys, 1991-2000*. Fire fighter line of duty fatalities have ranked fire fighting among other publicized hazardous occupations in the private sector, such as mining and construction. *Id.*

rendered unconscious. When a fire fighter becomes trapped, there is a great chance that he will experience significant burning, heart attack, or death. Additionally, fire fighting is made more strenuous and physically burdensome by the fact that the protective clothing and breathing apparatus a fire fighter must wear can add as much as 75 lbs to a fire fighter's weight.

In addition to the physical hazards that a fire fighter is certain to encounter, there are also thermal hazards that are unique to the profession of fire fighting. Fire fighters can experience heat stress from hot air, radiant heat, or contact with hot surfaces. Another form of heat stress that fire fighters experience is "endogenous heat," which is produced by the body during exercise but cannot be cooled or reduced during a fire due to the elements. It is common for heat stress to be compounded during fire fighting as a result of the insulating properties of the protective clothing, which results in additional heat production within the body. Such heat production may result in local injury in the form of burns or generalized heat stress, with the additional risk of dehydration, heat stroke and cardiovascular collapse.

When a fire fighter enters a burning structure, he has little idea of the materials and/or chemicals he is being exposed to, or the potentially hazardous effects of such exposure. Fire fighters do not have the luxury, as other workers do, of surveying their workplace before entering it. As a result, fire fighters often perform work in toxic atmospheres without adequate knowledge of the precise chemical hazards that are present. Fire fighters are routinely exposed to complex

and dynamic mixtures of chemical substances that are contained in fire smoke and building debris. It is likely that fire fighters encounter, among other things, benzene, asbestos, polycyclic aromatic hydrocarbons, and formaldehyde in the course of fighting a fire.

The large number of physical, thermal, and chemical hazards encountered by fire fighters have resulted in a considerable number of work-related injuries or deaths. Of the injuries reported, approximately 65% occur while at the scene of an emergency. See *IAFF 2000 Death and Injury Survey*. Sprains and strains are the leading cause of line of duty injuries, followed by lacerations and contusions, burns, inhalations of hazardous materials, and eye injuries. *Id.*

Occupational hazards also contribute to a significant number of fire fighter line of duty deaths. For instance, in the year 2000, 34 fire fighters were killed in the line of duty. *Id.* On September 11, 2001 alone, 343 fire fighters were killed after the collapse of the World Trade Center. The leading causes of deaths include heart attacks and burns after a fire fighter becomes trapped inside of a fire. *Id.* Deaths have also occurred as a result of vehicle and apparatus accidents and falls from burning structures. *Id.*

Moreover, occupational related diseases are becoming more common among fire fighters. The most common forms of occupational diseases are heart disease, lung disease and cancer. *Id.* Additionally, fire fighters are often afflicted with hearing loss, mental stress, and various communicable diseases, such as tuberculosis exposures, Hepatitis C exposures, and HIV/AIDS exposures. *Id.* All

of which makes the provisions of adequate workers' compensation laws of vital interest to fire fighters.

POINTS RELIED UPON

THE TRIAL COURT ERRED IN GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT BECAUSE PLAINTIFF LABOR ORGANIZATIONS HAVE REPRESENTATIONAL STANDING TO ASSERT A CHALLENGE TO CONSTITUTIONALITY OF THE NEW MISSOURI WORKERS COMPENSATION LAW ON BEHALF OF THEIR MEMBERS

1. *Hunt v. Washington State Apple Advertising Commission*, 432 U.S. 333 (1977)
2. *Missouri Bankers Ass'n v. Director of Missouri Div. of Credit Unions*, 126 S.W.3d 360 (Mo. 2003).
3. *Ferguson Police Officers Ass'n v. City of Ferguson*, 670 S.W.2d 921 (Mo. App. E.D. 1984).
4. *Duncan v. Missouri Bd. for Architects, Professional Engineers and Land Surveyors*, 744 S.W.2d 524 (Mo. App. 1988).

ARGUMENT

THE CIRCUIT COURT ERRED IN GRANTING DEFENDANT’S MOTION FOR SUMMARY JUDGMENT AND HOLDING THAT PLAINTIFF LABOR ORGANIZATIONS DO NOT HAVE REPRESENTATIONAL STANDING ON BEHALF OF THEIR MEMBERS

In granting the Defendant’s Motion for Summary Judgment, the Circuit Court held that Plaintiffs’ claims were not justiciable, in part, because the plaintiff organizations, including the IAFF local unions, lacked representational standing on behalf of their members to assert a constitutional challenge to the law. Op. at 7. This holding should be reversed because an examination of case law from various states, including Missouri, demonstrates, without question, that in circumstances similar to the present matter, labor organizations such as the IAFF local unions clearly have representational standing to assert claims on behalf of their members.

1. Challenging the Constitutionality of a Statute that Affects the Health and Safety of its Members is Germane to the Purpose of the Plaintiff Labor Organizations and the IAFF Local Unions

The Circuit Court erred when it held that Plaintiffs “did not allege” representational standing because “pleading . . . broad mission statements does not suffice” to show that the interests Plaintiffs seek to protect are “germane to their organizational purpose.” Op. at 7. The United States Supreme Court and various state courts, including Missouri state courts, have held that the pleading of a broad

mission statement by a labor organization or any other association is sufficient to satisfy the “germaneness requirement” of the representational standing analysis.

As an initial matter, the Circuit Court erroneously held that Plaintiffs were required to “allege” that they satisfied the requirements of representational standing. Under Missouri law, standing is an affirmative defense that must be raised and proved by a defendant. See *Frank Coluccio Const. Co. v. City of Springfield*, 779 S.W.2d 550, 552 (Mo. 1989) (citing *Blount Bros. Const. Co. v. United States*, 346 F.2d 963, 965 (1965)). Thus, the Circuit Court’s holding should be reversed.

Additionally, it is clear that the pleading of a labor organization’s mission or purpose satisfies the germaneness requirement of the representational standing analysis. For example, in *Hunt v. Washington State Apple Advertising Commission*, 432 U.S. 333, 343 (1977), the Supreme Court held that the Washington State Apple Advertising Commission had standing to assert a challenge to a North Carolina statute that adversely affected its members. In that case, the Washington State Apple Advertising Commission’s complaint only alleged:

the North Carolina statute had caused some Washington apple growers and dealers (a) to obliterate Washington State grades from the large volume of closed containers destined for the North Carolina market at a cost ranging from 5 to 15 cents per carton; (b) to abandon the use of preprinted containers, thus diminishing the

efficiency of their marketing operations; or (c) to lose accounts in North Carolina.

Id. at 342. After reviewing the complaint, the Court held that challenging a state statute's constitutionality was "central to the Commission's purpose of protecting and enhancing the market for Washington apples." *Id.* at 344. Accordingly, the plaintiff-Commission had representational standing on behalf of its members to challenge the constitutionality of the state statute. *Id.* at 344.

Similarly, in *Missouri Bankers Ass'n v. Director of Missouri Div. of Credit Unions*, 126 S.W.3d 360, 363 (Mo. 2003), this Court found that the plaintiff association satisfied the germaneness requirement of the representational standing analysis in challenging a Credit Union Commission's decision to permit a credit union to expand its base geographically. According to this Court, the germaneness requirement was satisfied "because one of MBA's purposes in representing the interests of its 88 member banks . . . is to protect those banks from unfair competitive forces." See e.g., *International Union of Operating Engineers, Local 148, AFL-CIO v. The Illinois Department of Employment Security*, 215 Ill. 2d 37, 51-52 (Ill. 2005) (germaneness requirement satisfied in union's challenge of Director's decision to reduce income and benefits because union's "sole purpose" is to further the work-related interests of its members); *Fraternal Order of Police, Capital City Lodge No. 9 v. City of Columbus*, 460 N.E.2d 639, 641 (Ohio App. 1983) (wage issued raised by union in its challenge of city charter are germane to plaintiff union's purposes, which include the betterment of its members working

conditions); *National Treasury Employees Union v. United States Merit Systems Protection Board*, 743 F.2d 895 (D.C. Cir. 1984) (interests the union seeks to protect, the rights of its members to adverse action protections when they are laid off, are germane to its purpose as exclusive representative of those workers).

In the present matter, there can be no debate that the plaintiff labor organizations, including the IAFF local unions, have satisfied the germaneness requirement of the representational standing analysis by pleading that challenging the new Missouri Workers' Compensation Law is within their mission and purpose. The Plaintiff's Petition for Declaratory Judgment states that the new Missouri Workers' Compensation Law "imposed significant costs of the risk of work-related injuries on Missouri workers, including the members of the plaintiff unions, councils, and associations" and that "Plaintiff's union or council members suffer present and substantial harm as a result of [the New Missouri Workers' Compensation law]." Petition for Declaratory Relief at 6. The Petition further states that "[m]embers of this Plaintiff include significant numbers of older workers who have retired from one job but who continue to work in Missouri, and are therefore subject to the [new Missouri Workers' Compensation Law]." Petition for Declaratory Relief at 5. The Petition also sets forth all of the changes made to the Missouri Workers Compensation Act and how those changes will adversely affect its members. Petition for Declaratory Relief, pp 9-28. Thus, similar to the plaintiff in *Hunt*, Plaintiffs have clearly established how challenging the

constitutionality of the new Missouri Workers Compensation Law is germane to its purpose.

Moreover, challenging the constitutionality of a statute that will have a direct and adverse affect on the health and welfare of fire fighters and their families is unquestionably germane to the IAFF local unions' mission of protecting their members who are injured in the line of duty. Accordingly, the Circuit Court's holding that Plaintiffs failed to satisfy the germaneness requirement of the representational standing analysis should be reversed.

2. Participation of the Plaintiff Labor Organizations' Individual Members is Not Required in this Suit.

The Circuit Court also held that Plaintiffs failed to allege that "the claims and relief do not require the participation of individual members in the suit." Op. at 7. Simply stated, this holding is contrary to well-established Missouri law.

In Missouri, individual members of a labor organization such as the IAFF are not required to participate individually in litigation that was filed specifically to obtain declaratory relief. *Home Builders Assoc. of Greater St. Louis v. City of Wildwood*, 32 S.W.3d 612 (Mo. App. E.D. 2000). A request for prospective relief usually does not require the participation of an organization's members in the lawsuit, although a request for monetary relief usually does require membership participation. *Ferguson Police Officers Ass'n v. City of Ferguson*, 670 S.W.2d 921, 925-26 (Mo. App. E.D. 1984).

In the present matter, Plaintiffs seek declaratory, not monetary relief. Thus, under well established principles of Missouri law, the participation of individual members of the IAFF local unions, or any of the other plaintiff organizations, is not required.

3. The Plaintiff Labor Organizations' Individual Members were Not Required to Exhaust Administrative Remedies

The Circuit Court also held that Plaintiffs lacked representational standing to assert the rights of their members because “the plaintiffs’ individual members have not exhausted their administrative remedies.” Op. at 7. According to the Circuit Court, “the Commission has exclusive jurisdiction to decide questions such as whether an incident is covered by law, or other questions requiring agency expertise.” Op at 7. This holding should be reversed because administrative agencies do not have the authority to render a statute unconstitutional.

As explained above, Plaintiffs seek a declaration that the new Missouri Workers’ Compensation Law is unconstitutional. There is little question that an administrative agency, such as the Commission, *does not* have the authority to render a legislative enactment as unconstitutional. For instance, in *Duncan v. Missouri Bd. for Architects, Professional Engineers and Land Surveyors*, 744 S.W.2d 524 (Mo. App. 1988), the court stated that “[a]dministrative agencies lack the jurisdiction to determine the constitutionality of statutory enactments.” *Id.* at 531, citing *City of Joplin v. Industrial Commission of Missouri*, 329 S.W.2d 687 (Mo. Banc 1959). The court continued: “Raising the constitutionality of a statute

before such a body is to present to it an issue it has no authority to decide. The law does not require the doing of a useless and futile act.” *Id.*, citing *State Savings Assoc. of St. Louis v. Kellogg*, 52 Mo. 583 (1873) l.c. 591. See e.g., *Cumberland Farms, Inc. v. Groton*, 808 A.2d 1107 (Conn. 2002) (“It is well settled under the common law that adjudication of the constitutionality of legislative enactments is beyond the jurisdiction of administrative agencies.”); *State v. Board of Spr’rs of Elections*, 173 So. 726 (La.1937) (determination of whether a statute is unconstitutional is a purely judicial function); *Dependents of Ondler v. Peace Officers Benefit Fund*, 289 N.W.2d 486, 487 N.1 (Minn. 1980) (it “has been generally thought” that an administrative agency has no jurisdiction to adjudicate the constitutionality of legislative enactments).

Thus, in the present matter, the Circuit Court’s holding, which would require Plaintiffs to seek a declaration from the Commission that the new Missouri Workers’ Compensation Law is unconstitutional, should be reversed. Any such declaration must be made by the judiciary, not the Commission. Accordingly, Plaintiffs’ individual members were not required to exhaust administrative remedies prior to filing this matter in the Circuit Court and it is unquestionable that the plaintiff labor organizations have representational standing to assert a constitutional challenge to the new law on behalf of its members.

CONCLUSION

The IAFF, in support of Missouri Alliance for Retired Americans, et al., respectfully requests that this Court reverse the decision of the Circuit Court.

Respectfully Submitted,

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ON BEHALF OF THE
INTERNATIONAL ASSOCIATION OF
FIRE FIGHTERS

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